EXHIBIT LIST

Exhibit A	September 22, 2005 Decision and Order of the Immigration Judge
Exhibit B	September 21, 2005 Stipulated Request for Removal
Exhibit C	August 31, 2005 Notice to Appear
Exhibit D	Unpublished Decisions by the Board of Immigration Appeals
Exhibit E	United States v. Vasquez-Villegas, 2006 WL 2546714 (E.D. Wash. Sept. 1, 2006) (unpublished)

EXHIBIT A

September 22, 2005 Decision and Order of the Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
LANCASTER, CALIFORNIA

IN THE MATTER OF:)
CESAREO NICOLAS)
A# 95 675 811) **IN REMOVAL PROCEEDINGS**
Respondent.)

CHARGES: 212(a)(6)(A)(i)

RELIEF APPLICATION: None

ON BEHALF OF RESPONDENT:

Pro Se

ON BEHALF OF DEPARTMENT OF HOMELAND SECURITY
Assistant Chief Counsel
Lancaster, California

DECISION AND ORDER OF THE IMMIGRATION JUDGE

Pursuant to the Notice to Appear issued Aug 31 2005, the respondent is charged with being removable as indicated above. The respondent, representing himself, has submitted a statement wherein he waives a personal hearing before the Immigration Judge, and admits and concedes with regard to the truthfulness of the allegations and charges contained in the Notice to Appear. The respondent has made no application for relief from removal proceedings such as would allow him to remain in the United States, but instead requests issuance of an order by the Court for his removal to his native country. A similar request has been received from the Department of Homeland Security.

There being no factual or legal issues to be resolved or in dispute and there being no request for relief from removal, or discretionary considerations to be exercised by the Court, it appears appropriate and in the best interests of justice to grant the requests of the parties. Based upon the respondent's admissions, the charges of removal are sustained by evidence that is clear, convincing and unequivocal.

Accordingly, the following Order shall be entered:

ORDER: IT IS HEREBY ORDERED that the respondent be REMOVED from the United States to MEXICO on the charges contained in the Notice to Appear.

Failure to appear for removal as ordered by the DHS may result in a $500 fine for every day you fail to comply with the order. INA § 274D. Also, if you are removable for being deportable under section 237 of the Act, and you fail to comply with your removal order, you shall face additional fines and/or imprisonment for up to 4, and in some cases 10, years., INA § 243(a).

Date: 9/22/05

WILLIAM J. NICKERSON, JR.
Immigration Judge

Appeal Waived by Both

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN C/O CUSTODIAL OFFICER [ ] ALIEN'S ATT/REP [ ] DHS
DATE: 9/22/05 BY: COURT STAFF

EXHIBIT B

September 21, 2005 Stipulated Request for Removal

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LANCASTER, CALIFORNIA

IN THE MATTER OF:)
)
Cesarco, Nicolas)
)
RESPONDENT)

IN REMOVAL PROCEEDINGS

FILE NO: A95-675-811

GOVERNMENT'S CONCURRENCE TO
STIPULATED REQUEST FOR REMOVAL ORDER
AND WAIVER OFHEARING

Upon review of the Respondent's administrative file and the attached documents, the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), concurs with the request for the Immigration Judge to issue a stipulated removal order without holding a hearing. ICE waives appeal if the request for a stipulated order of removal is granted. ICE reserves the right to appeal if an order of removal is not issued in this matter.

All inquires and correspondence in this matter should be directed to the undersigned ICE attorney who is handling this matter.

Respectfully submitted,

[signature]

Assistant Chief Counsel

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LANCASTER, CALIFORNIA

IN THE MATTER OF: **En la Causa de:**	)	**IN REMOVAL PROCEEDINGS** **En Procedimientos de Expulsión**
CESAREO, NICOLAS	)	FILE NO: A 95 675 811
	)	Archivo No:
RESPONDENT Compareciente		

STIPULATED REQUEST FOR REMOVAL ORDER
AND WAIVER OF HEARING
PETICIÓN PARA ORDEN DE EXPULSIÓN ESTIPULADA
Y RENUNCIA DE AUDIENCIA

I CESAREO, NICOLAS, understand that I am in proceedings to determine if I am removable from the United States. I make the following statements and admissions:

Yo, ______, comprendo que estoy en proceso para decidir si debo ser expulsado de los Estados Unidos. Admito y declaro lo siguiente:

1. I am at least 18 years of age.

   Tengo no menos de 18 años de edad.

2. I have received and I have read or had read to me a copy of the Notice to Appear (NTA) dated 08/31/2005 The NTA contains my full, true and correct name.

   He recibido y he leído o se me ha leído una copia del Aviso de Comparecencia (NTA) fechada 08/31/05. El NTA incluye mi nombre completo, verdadero y correcto.

3. I understand that I have the following rights and privileges and that, by signing this stipulated request for removal, I will be surrendering these rights and privileges:

   Comprendo que tengo los siguientes derechos y privilegios, y que al firmar esta petición de expulsión estipulada, renunciaré a esto derechos y privilegios:

   A. The right to be represented by a lawyer or other person qualified to represent aliens in immigration proceedings at no expense to the government of the United States. I have also been provided with a copy of the List of Free Legal Services Providers. I hereby waive my right to be represented in this proceeding. I will represent myself in this proceeding.

El derecho de ser representado por un abogado u otra persona apta para representar a extranjeros en procedimientos de inmigración, sin costo alguno para el gobierno de los Estados Unidos. También se me ha dado una copia de la Lista de los Proveedores de Servicios Legales Gratuitos. Por el presente, renuncio a mi derecho de ser representado en estos procedimientos. Me representaré a mí mismo en estos procedimientos.

B. The right to a hearing before an Immigration Judge. I understand that by giving up my right to a hearing before an Immigration Judge, I will be giving up the following rights and privileges.

(1) The right to question witnesses;
(2) The right to offer and object to evidence;
(3) The right to require the government to prove my removability from the United States;
(4) The right to apply for any and all relief from removal for which I might be eligible under the Immigration and Nationality Act or any other provision of law. I understand that, if I wish to request any relief from removal, I should request a hearing before an Immigration Judge. Such relief may include, but is not limited to, voluntary departure, asylum, withholding or removal, relief under Article 3 of the Convention Against Torture, adjustment of status, change of status, suspension or cancellation of removal, registry, and any waivers of removability. I do not want to apply for any relief from removal for which I may be eligible.

Knowing and understanding the above rights and privileges, I waive and abandon them and request that my removal proceedings be held without a hearing before an Immigration Judge and that the Immigration Judge issue an order based solely on the written record which will include this stipulation.

El derecho a una audiencia ante un Juez de Inmigración. Comprendo que al renunciar a mi derecho a una audiencia ante un Juez de Inmigración, renunciaré a los siguientes derechos y privilegios:

(1) el derecho de interrogar a testigos;
(2) el derecho de presentar y oponerme a las pruebas
(3) el derecho de exigir que el gobierno demuestre mi expulsabilidad de los Estados Unidos;
(4) el derecho de solicitar algún o cualquier recurso en contra de la expulsión al cúal pudiese calificar según la Ley de Inmigración y Nacionalidad o alguna otra disposición de la ley. Comprendo que si deseo solicitar algún recurso en contra de la expulsión, debo de pedir una audiencia ante un Juez de Inmigración. Tal recurso puede incluir, pero no se limitará a la salida voluntaria, el asilo, la retención de la expulsión, el recurso según el Artículo 3 del Convenio en contra de la Tortura, la regularidad migratoria. el cambio de categoría migratoria, la suspensión de la deportación o la cancelación de la expulsión, el registro, o alguna dispensa en contra de la expulsión. No deseo solicitar ningún recurso en contra de la expulsión al cual pudiese calificar.

A sabiendas y consciente de los derechos y privilegios arriba mencionados, los renuncio y abandono, y pido que mi proceso de expulsión proceda sin audiencia ante un Júez de Inmigración y que el Juez de Inmigración emita una order basada únicamente en el acta escrita, la cual incluirá esta estipulación.

4. I admit that all of the factual allegations contained in the NTA are true and correct. I also agree that I am inadmissible or deportable and will be removed from the United States based on the charge(s) on the NTA.

Admito que todas la acusaciones incluidas en el NTA son fiel y verdaderas. Concedo que no puedo ser admitido y que puedo ser deportado y que sere expulsado de los Estados Unidos según el/los cargo(s) en el NTA.

5. I choose Mexico as the country to be designated for removal.

Elijo a ____________________ como el país designado para la expulsión.

6. I understand that, depending upon the facts and circumstances of my case, I cannot return to the United States for a minimum of ten years without special permission from the Attorney General of the United States and possibly forever. I also understand that returning without lawful permission could result in being removed from the United States and/or being prosecuted for illegal reentry which may result in punishment including a possible fine and/or imprisonment.

Comprendo que sujeto a los hechos y circunstancias de mi caso, no podré regrezar a los Estados Unidos por un plazo mínimo de diez años sin el permiso especial del Fiscal General de los Estados Unidos o quizás para siempre. Comprendo también que regresar sin permiso legal resultaría en el ser expulsado nuevamente de los Estados Unidos y/o enjuiciado por reingreso ilegal, lo cual podría resultar en castigos, incluyendo una posible multa y/o encarcelamiento.

7. I understand and agree that this written stipulation will be made an exhibit to the Record of the Proceedings for the Immigration Judge to consider.

Comprendo y entiendo que esta estipulación escrita formará parte de los ejemplares de prueba en el Acta del Proceso, para ser considerada por el Juez de Inmigración.

8. I understand and agree to accept a written order for my removal as a final disposition of these proceedings. I waive my right to appeal the written order of the Immigration Judge.

Comprendo y estoy de acuerdo en aceptar una orden escrita para mi expulsión como decisión final de estos procedimientos. Renuncio a mi derecho de apelar la orden escrita del Juez de Inmigración.

9. I request that, if my request for entry of a stipulated order of removal is rejected by the Immigration Judge, my case be transferred to the Immigration Court which has jurisdiction over the detention facility where I am detained. Further, I waive the opportunity to submit comment on any motion by the Government to have my case transferred to such Court.

Pido que si mi solicitud para que se emita una orden de expulsión estipulada es rechazada por el Juez de Inmigración, mi caso sea trasladado al Tribunal de Inmigración que tenga la jurisdicción sobre el centro de detención donde estoy detenido. Además, renuncio a la oportunidad de responder a cualquier petición de parte del gobierno para transladar mi caso a dicho Tribunal.

10. (Respondent must initial one.) NC I have read or ______ I have had read to me in a language I understand this entire stipulation. I fully understand its consequences. I submit this request for removal voluntarily, knowingly and intelligently. I realize that by signing the stipulation, I will be removed from the United States.

(El comparenciente deberá de poner sus iniciales en una.) ______ He leído o ______ se me ha leído esta

estipulación completamente en un idioma que entiendo. Comprendo sus consecuencias totalmente. Presento esta petición de expulsión consciente e intencionalmente. Comprendo que al firmar la estipulación, seré expulsado de los Estados Unidos.

11. I certify that all the information I have given in this stipulation is true and correct.

Certifico que toda la información que he dado en esta estipulación es fiel y correcta.

9-21-05
DATE/*FECHA*

RESPONDENT/*COMPARECIENTE*

SIGNATURE OF WITNESS/ *FIRMA DEL TESTIGO*

STEPHEN LAROCCA IEA
PRINTED NAME AND TITLE OF WITNESS
NOMBRE Y TÍTULO DEL TESTIGO EN LETRA DE MOLDE

CERTIFICATION
CERTIFICACIÓN

______ I certify that I determined that the above-referenced respondent could read by asking the respondent to read to me the following paragraphs: 3A, 4 and 6.

______ *Certifico que decidí que el compareciente arriba mencionado podía leer al pedirle que me leyese los siguientes párrafos: 3A, 4 y 6.*

-Or-
-O-

______ I certify that this document was read to the respondent in its entirety in the ______________________ language.

______ *Certifico que este documento le fue leído al compareciente totalmente en el idioma ______________________.*

9/21/05
DATE/*FECHA*

SIGNATURE OF GOVERNMENT OFFICIAL
FIRMA DEL FUNCIONARIO DEL GOBIERNO

A. Castillo PO
PRINTED NAME AND TITLE OF GOVERNMENT OFFICIAL
NOMBRE Y TÍTULO DEL FUNCIONARIO DEL GOBIERNO EN LETRA DE MOLDE

EXHIBIT C

August 31, 2005 Notice to Appear

U. S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A095 675 811
Case No: [redacted]

In the Matter of:

Respondent: Nicolas CESAREO currently residing at:

35100 NORTH 60TH STREET WEST
LANCASTER CALIFORNIA 93560
(Number, street, city state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of MEXICO and a citizen of MEXICO;

3) You entered the United States at or near an unknown date and location on or about January 1, 1992;

4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
date time and place to be determined
(Complete Address of Immigration Court, Including Room Number, if any)

on a date to be set (Date) at a time to be set (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

DAREN DOWELL
SUPERVISORY SPECIAL AGENT
(Signature and Title of Issuing Officer)

Date: 8/31/05

Los Angles, California
(City and State)

See reverse for important information

Form I-862 (Rev. 3/22/99)N

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

Nicolas C.
(Signature of Respondent)

Before: [signature] SPECIAL AGENT
(Signature and Title of INS Officer)

Date: 8/31/05

Certificate of Service

This Notice to Appear was served on the respondent by me on 08/31/05 (Date), in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the ______________ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

x Nicolas C.
(Signature of Respondent if Personally Served)

DANIEL ROCHA
SPECIAL AGENT [signature]
(Signature and Title of Officer)

EXHIBIT D

Unpublished Decisions by the Board of Immigration Appeals

2006 WL 3088805 (BIA)

** THIS IS AN UNPUBLISHED DECISION THAT CANNOT BE CITED **

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

IN:RE: GUILLERMINA
MEDRANO
-
UMANZOR

FILE: A99 520 050 - HARLINGEN

August 9, 2006

IN REMOVAL PROCEEDINGS
APPEAL

ON BEHALF OF RESPONDENT:

Jose M. Guerrero, Esquire

CHARGE:
Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Remand

ORDER:

PER CURIAM. The respondent, a native and citizen of El Salvador, has appealed an

Immigration Judge's June 7, 2006, order of removal. The record reveals that the respondent signed a written stipulation pursuant to 8 C.F.R § 1003.25(b). This regulation allows an Immigration Judge to enter an order or removal without a hearing if it is stipulated to by the respondent and the DHS and requires that, where the respondent is unrepresented, the Immigration Judge "must determine that the alien's Waiver is voluntary, knowing, and intelligent." *Id.* The Immigration Judge's decision does not address this regulatory requirement. We therefore find that a remand is warranted in this case in order to allow the Immigration Judge to make the requisite factual findings, in accordance with 8 C.F.R. § 1003.25(b), and enter a new decision.

Accordingly, the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and the entry of a new decision.

<Signature>

FOR THE BOARD

2006 WL 3088805 (BIA)
END OF DOCUMENT

C
2005 WL 3709274 (BIA)

** THIS IS AN UNPUBLISHED DECISION THAT CANNOT BE CITED **

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

IN RE: JOHANA NOEMI LAGUNES-HUERTA

File: A98 371 055 - Bloomington

December 28, 2005

IN REMOVAL PROCEEDINGS
APPEAL

ON BEHALF OF RESPONDENT:

Shante Smith, Esquire

The respondent appeals an Immigration Judge's September 9, 2005, order. The Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) has not responded to the appeal. The Immigration Judge's decision will be vacated, and the case remanded to the immigration court for further proceedings.

The respondent signed a written stipulation pursuant to 8 C.F.R. § 1003.25(b). This regulation allows an Immigration Judge to enter a removal order without a hearing if it is stipulated to by the respondent and the DHS. The regulation requires that, where the respondent is unrepresented, the Immigration Judge "must determine that the alien's waiver is voluntary, knowing, and intelligent." *Id.* The "Decision and Order of the Immigration Judge" does not address this regulatory requirement, and we will therefore remand the case to the Immigration Judge for further consideration and necessary fact finding. We note that the respondent asserts that she did not understand that she was waiving the right to a hearing, and claims that she told the DHS officer that she had counsel.

ORDER: The Immigration Judge's order of September 9, 2005, is vacated, and the record is remanded to the Immigration Court for further proceedings consistent with this opinion.

<Signature>

FOR THE BOARD

C

2006 WL 3485805 (BIA)

** THIS IS AN UNPUBLISHED DECISION THAT CANNOT BE CITED **

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

IN RE: JAMES ALEXANDER YOUNG

FILE: A24 393 117 - OAKDALE

November 8, 2006

IN REMOVAL PROCEEDINGS
APPEAL

ON BEHALF OF RESPONDENT:
Byron R. Mobley, Esquire
ON BEHALF OF DHS:

Jerry A. Beatmann
Assistant Chief Counsel

CHARGE:
Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude
Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

Lodged: Sec. 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] - Controlled substance violation

APPLICATION: Remand

ORDER:

PER CURIAM. The respondent, a native and citizen of the United Kingdom, has appealed an Immigration Judge's August 17, 2006, order of removal.[FN1] The record reveals that the respondent signed a written stipulation pursuant to 8 C.F.R. § 1003.25(b). This regulation allows an Immigration Judge to enter an order of removal without a hearing if it is stipulated to by the respondent and the Department of Homeland Security (DHS) and requires that, where the respondent is unrepresented, the Immigration Judge "must determine that the alien's waiver is voluntary, knowing, and intelligent." *Id.* At the bottom of the stipulated removal document, the Immigration Judge indicated that the written stipulations were signed by the parties in the Immigration Judge's presence and that the respondent's waiver of appeal was determined to be voluntary, knowing, and intelligent. We find that this signed and typed statement by the Immigration Judge satisfies the requirements of 8 C.F.R. § 1003.25(b). We therefore find that the respondent has waived appeal. The respondent has made no argument on appeal that the decision to waive appeal was not a knowing and intelligent one. Thus, the Immigration Judge's decision became administratively final upon the respondent's waiver of the right to appeal, and the Board lacks jurisdiction over this case. *See Matter of Shih*, 20 I&N Dec. 697 (BIA 1993). Accordingly, the appeal is dismissed and the record is returned to the Immigration Court without further Board action.

<Signature>

FOR THE BOARD

FN1. The record shows that a motion to appear telephonically submitted by present counsel for the respondent was rejected by the Oakdale Immigration Court on August 16, 2006, because it was unaccompanied by a completed Notice of Appearance as Attorney before the Immigration Judge (Form EOIR-28) as required by long-standing regulation at 8 C.F.R. § 1292.4. The respondent has provided no evidence with his appeal which shows that counsel had, in fact, submitted a Form EOIR-28 with the rejected motion or at any time to the Oakdale Immigration Court. We further note that the respondent does not dispute the statements of the DHS in its appellate brief that the respondent did not inform the Oakdale Immigration Judge at his August 17, 2006, hearing that he had counsel.

U.S. DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

IMMIGRATION COURT

1900 E. WHATLEY RD. POBOX 750

OAKDALE, LA 71463

In the Matter of: YOUNG, JAMES ALEXANDER RESPONDENT
Case No: A24-393-117
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon the basis of respondent's admissions, I have determined that the respondent is subject to removal on the charge(s) in the Notice to Appear.

Respondent has made no application for relief from removal.

It is HEREBY ORDERED that the respondent be removed from the United States to United Kingdom on the charge(s) contained in the Notice to Appear.

If you fail to appear for removal at the time end place ordered by the INS, other that because of exceptional circumstances beyond your control (such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances), you will not be eligible for the following forms of relief for a period of ten (10) years after the date you were required to appear for removal:

(1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
(2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
(3) Adjustment of status or change of status as provided for in section 245, 248 or 249 of the Immigration and Nationality Act.

____

AGNELIS L. REESE

Immigration Judge

Date: Aug 17, 2006

Appeal: WAIVED (A/I/B)

Appeal Due By:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [P] ALIEN [ ] ALIEN c/o Custodial Officer [ ] Alien's ATT/REP [P] INS

DATE: 8/16/06 BY: COURT STAFF KT

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Form EOIR 7 - 4T (REMOVAL Order)

KT9

2006 WL 3485805 (BIA)
END OF DOCUMENT

EXHIBIT E

United States v. Vasquez-Villegas, 2006 WL 2546714 (E.D. Wash. Sept. 1, 2006) (unpublished)

Only the Westlaw citation is currently available.

United States District Court,
E.D. Washington.
UNITED STATES of America, Plaintiff,
v.
Jorge VASQUEZ-VILLEGAS, Defendant.
No. CR-06-6021-EFS.

Sept. 1, 2006.
Donald Eugene Kresse, Jr, U.S. Attorney's Office, Yakima, WA, for Plaintiff.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS INDICTMENT

EDWARD F. SHEA, District Judge.

***1** On August 25, 2006, Defendant Jorge Vasquez-Villegas moved the Court to dismiss the Indictment filed against him on May 23, 2006. (Ct.Rec.32.) Defendant asserts his underlying deportation did not comport with due process and he suffered prejudice as a result of such defect. (Ct. Rec. 34 at 3.) In its response, the Government does not object to Defendant's motion. (Ct.Rec.35.) As explained below, the Court grants Defendant's motion.

In the indictment, the Government alleges that on or about April 8, 2006, Defendant was deported and removed from the United States. (Ct.Rec.1.) Subsequently, the Government alleges that on or about May 15, 2006, Defendant was found in Franklin County, in the Eastern District of Washington. *Id.* Through this motion, Defendant asserts his original deportation proceeding failed to comport with due process. (Ct.Rec.34.) In a prosecution for reentry by a removed alien, the defendant can succeed if he demonstrates, "(1) his due process rights were violated by defects in his underlying proceeding, and (2) he suffered prejudice as a result of the defects ." *United States v. Zarate-Martinez,* 133 F.3d 1194, 1197 (9th Cir.1998).

Defendant argues his original deportation proceeding was defective because it was accomplished through a proceeding that did not involve a hearing before an immigration judge (IJ) or the necessary waiver. (Ct. Rec. 34 at 4.) Under the Immigration and Nationality Act, removal proceedings may take place, "(i) in person, (ii) where agreed to by the parties, in the absence of the alien, (iii) through video conference %y(4)" 8 U.S.C. § 1229a(b)(2)(A). When a defendant proceeds without counsel and waives his right to a hearing before an IJ, the IJ must determine whether or not the waiver is "**voluntary, knowing**, and intelligent." **8 C.F.R. § 1003.25(b)**. "[W]here the record contains an inference that the petitioner is eligible for relief from deportation, 'the IJ must advise the alien of this possibility and give him the opportunity to develop the issue.' " *United States v. Arrieta,* 224 F.3d 1076, 1079 (9th Cir.2000) (quoting *Moran-Enriquez v. INS,* 884 F.2d 420, 423 (9th Cir.1989)). Defendant contends there is no evidence the IJ engaged in any fact-finding efforts to determine the validity of Defendant's waiver and that therefore the proceeding was defective. (Ct. Rec. 34 at 7.)

Defendant further argues that he was prejudiced by the defect in his hearing. *Id.* at 9. In order to establish prejudice, Defendant must show "that he had a 'plausible' ground for relief from deportation." *Arrieta,* 224 F.3d at 1079. An alien may be eligible for fast-track voluntary departure as long as he is not barred from relief due to terrorism-related activities or an aggravated felony. 8 U.S.C. § 1229c(a). In the instant case, Defendant argues that he would have been a good candidate for fast-track voluntary departure under 8 U.S.C. § 1229c, and thus could have avoided deportation had he been apprised of his rights. (Ct. Rec. 34 at 10.)

***2** In its response to Defendant's motion to dismiss, the Government acknowledges that it is unable to refute Defendant's allegations and thus does not object to Defendant's motion to dismiss. (Ct.Rec.35.) Therefore, the Court finds Defendant has demonstrated his due process rights were violated and that he was prejudiced by the violation. As such, the Court hereby grants Defendant's motion to dismiss the Indictment against Mr. Vasquez-Villegas.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant's Motion to Dismiss Indictment

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(Ct.Rec.32) is **GRANTED.** The Indictment **(Ct.Rec.1)** filed in Case No. CR-06-6021-EFS is **DISMISSED.**

2. The pretrial conference set for **September 12, 2006,** and the trial set for **September 18, 2006,** are hereby **STRICKEN.**

3. All pending motions are **DENIED AS MOOT.**

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide a copy to counsel, the U.S. Marshal, the U.S. Probation Officer, and the Jury Administrator.

Not Reported in F.Supp.2d, 2006 WL 2546714 (E.D.Wash.)

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